

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

R.D. LOTTIE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 3:01cv582
)	
WEST AMERICAN INSURANCE)	
COMPANY of the Ohio Casualty Group)	
of Insurance Companies and The Ohio)	
Casualty Insurance Co. d/b/a Ohio)	
Casualty Group,)	
)	
Defendants.)	

OPINION AND ORDER

This matter is before the court on “Defendants’ Objection to Plaintiff’s Amended F.R.C.P. 26(a)(3)ABC Disclosures”, filed on May 5, 2006. The plaintiff, R.D.Lottie (“Lottie”) filed his response on May 8, 2006. Lottie filed his second amended disclosures on this same date.

Discussion

The Defendants first object to the addition of two witnesses to Lottie’s first amended disclosures, Adolf Lottie, and Goldie Lottie. In his response, Lottie states that in his second amended disclosures he has deleted those two witnesses. Thus the Defendants’ objection is moot.

The Defendants next object to Exhibit 4, wherein Lottie lists repair estimates for each dwelling. The Defendants state that they are unable to determine if these are different or supplemental repair estimates which have previously been identified in the case. The Defendants object to any additional or supplemental repair estimates, beyond those which were

initially or originally identified for each respective dwelling. The Defendants state that they have never seen, and have not been provided any other repair estimates for either of the properties. In response Lottie states that in his “Supplemental Breakdown of Plaintiff’s Damages and Authorities”, filed on May 1, 2006, he included “an update of repair estimates from the initial repair estimates to account for inflation and increases in material costs and profit margin.” Lottie further states that the Supplemental Breakdown does not include any new estimates of repair costs. It appears that Lottie’s explanation has mooted the issue, in that no new documents are being relied on to support the repair estimates. In any event, this court’s ruling on the motions in limine with respect to damages has limited Lottie’s damages to the amounts listed in his initial repair estimates.

The Defendants next object to Exhibit 5, which is “a calculation of damages made by Plaintiff”. The Defendants state that they have never been provided with a copy of this calculation of damages, and that the evidence is also inadmissible for the reasons set forth in the motions in limine with respect to damages. In response, Lottie states that the Supplemental Breakdown includes an up to date listing of lost rental income, taxes and insurance paid and anticipated to be paid by Plaintiff through the trial of this lawsuit. These issues have been dealt with in this court’s ruling on the motions in limine with respect to damages. That is, Lottie will not be permitted to present evidence of his lost rental income, taxes and insurance during the damages phase of this trial.

Next, the Defendants object to Exhibit 10, which is a “report of fires in the South Bend area”. The Defendants indicate that they have never seen a copy of this report and the existence of the report has never been disclosed to them. In response Lottie has withdrawn the exhibit.

Lastly, the Defendants state that they have repeatedly asked Lottie to stipulate as to certain issues regarding the fires in this matter, but Lottie has refused to stipulate. The Seventh Circuit Court of Appeals has held that although the court has the power to request the parties to consider stipulating to undisputed facts, it cannot order them to stipulate. J.F. Edwards Constr. Co. v. Anderson Safeway Guard Rail Corp., 542 F.2d 1318, 1323 (7th Cir. 1976).

Conclusion

On the basis of the foregoing, the Defendants' objections are hereby SUSTAINED, except for the objection to failure to stipulate which is hereby DENIED.

Entered: May 26, 2006.

s/ William C. Lee
William C. Lee, Judge
United States District Court